

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:28.11.2007

CORAM

THE HONOURABLE Mr. JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Civil Revision Petition (NPD) Nos.98 & 99 of 2006
and
C.M.P.Nos. 786 & 787 of 2006

A.S.Venkataramanujam Chettiar
residing at No.7, Nagathamman Koil
Street, Mettupalayam, Chennai-33
Managing Trustee of Sri Prasanna
Venkatesa Perumal Koil, Mettupalayam
Chennai-33

..... Petitioners in
both petitions

Vs.

1. The Executive Officer,
Sri Arulmigu Venkatesa Perumal Temple,
Mettupalayam, Chennai-33
2. A.S.Manavala Chetty
(for himself and representing the
members of Baliya Chetty Community
in and around Mettupalayam
Saidapet, Chennai-33)
3. The State of Tamil Nadu
rep.by Commissioner & Secretary
to Government, Hindu Religious
& Charitable Endowment Department
Fort St.George, Chennai-9
4. The Commissioner Hindu Religious
& Charitable Endowment (Administration)
Department, having his Office at No.20
Nungambakkam High Road, Chennai-34
5. The Deputy Commissioner,
Hindu Religious &
Charitable Endowment (Administration)
Department, having his office at No.20,
Nungambakkam High Road,
Chennai-34

6. T.V.Selvarajan (Given up)
7. The Mettupalayam Public Welfare & Development Association, rep. by its Secretary, Shanmuga Raj
Having office at Old No.100,
Kodambakkam High Road
Mettupalayam, Chennai-600 033
- Respondents in
CRP.No.98/2006

1. The Mettupalayam Public Welfare & Development Association, rep. by its Secretary, Shanmuga Raj
Having office at Old No.100,
Kodambakkam High Road
Mettupalayam, Chennai-600 033
2. A.S.Manavala Chetty
S/o Sriniviasalu Chettiar
(for himself and representing the members of Baliya Chetty Community in and around Mettupalayam Saidapet, Chennai-33
3. The State of Tamil Nadu
rep.by Commissioner & Secretary to Government, Hindu Religious & Charitable Endowment Department
Fort St.George, Chennai-9
4. The Commissioner Hindu Religious & Charitable Endowment (Administration) Department, having his Office at No.20 Nungambakkam High Road
Chennai-34
5. The Deputy Commissioner, Hindu Religious & Charitable Endowment (Administration) Department, having his office at No.20, Nungambakkam High Road, Chennai-34.
6. The Executive Officer,
Sri Arulmigu Venkatesa Perumal Temple,
Mettupalayam, Chennai-33
7. T.V.Selvarajan (Given up)
- .. Respdents in
CRP.No.99 /2006

Civil Revision Petitions are filed under Article 227 of Constitution of India, against the order dated 5.12.2005 in C.M.P.No.2257 of 2005 in A.S.No.237 of 2005 and C.M.P.No.2256 of 2005 in A.S.No.268 of 2004 respectively on the file of V Additional Judge, City Civil Court, Chennai.

For Petitioner : : Mr. S.Senthilnathan, Advocate
For respondents : : Mr.S D.Ramalingam-R1 & R6
; Mr.B.Thirupathi Kumar-R2
: Ms. R.Revathi, Govt. Advocate
RR3 to R5 (both cases)
: Mr.B.T.Seshadri-R7
in CRP No.98/2006
R6 given up-CRP NO.98/2006
R7-Given up-CRP No.99/2006

C O M M O N O R D E R

The order passed in C.M.P.No.2257 of 2005 in A.S.No.237 of 2005 on the file of V Additional Judge, City Civil Court, Chennai is under challenge in C.R.P.No.98 of 2006 and the order passed in C.M.P.No.2256 of 2005 in A.S.No.268 of 2004 on the file of V Additional Judge, City Civil Court, Chennai is under challenge in CRP.No.99 of 2006.

2. The revision petitioner in both civil revision petitions had filed C.M.P.No.2257 of 2005 and 2256 of 2005 in A.S.No.237 of 2004 and A.S.No.268 of 2004 respectively under Section 151 of CPC to get himself impleaded in the appeal as additional respondent claiming that he is the elected Trustee of the Baliya Chetty Community. The suit in O.S.No.8692 of 1997 was filed by one A.S.Manavala Chetty under Order I Rule 10 CPC in his representative capacity of Baliya Chetty Community. The said suit was decreed.

3. Aggrieved by the Judgment and decree in O.S.No.8692 of 1997, the 7th defendant in the suit had preferred an appeal in A.S.No.268 of 2004 and the 4th defendant, the Executing Officer had preferred an appeal in A.S.No.237 of 2005. The learned first appellate Judge had dismissed both C.M.P.Nos.2257 of 2005 and 2256 of 2005 on the ground that the petitioner is not a necessary party to the suit. According to the plaintiff, the Managing Trustee of Sri Arulmigu Venkatesa Perumal Temple is one B.K.Ramesh Chettiar. According to the revision petitioner, he has been elected as the Managing Trustee of the said temple. To substantiate this contention, the revision petitioner has not produced any document before the First Appellate Court to show that he is the elected Managing Trustee of the said Temple.

3. The learned counsel appearing for second respondent relying on a decision reported in S.Krishan-v- Rathinavel Naicker and 22 others(2007(2)CTC 73) would contend that additional party cannot be impleaded at the appellate stage. The facts of the said case are that one Krishnan has filed a suit in O.S.No.341 of 1998 before the Principal District Munsif, Kancheepuram for permanent injunction. The first respondent in the said suit had filed three other suits ie., O.S.No.799 of 1998, O.S.No.819 of 1998 and O.S.No.573 of 1999 against the plaintiff Krishnan in O.S.No.341 of 1998. Against the Judgment and Decree in O.S.No.341 of 1998, an appeal has been preferred before the Additional District Court (Fast Track Court No.II) Kancheepuram in A.S.No. 17 of 2001 wherein respondents 5 to 23 in the first appeal have as proposed parties filed I.A.No.426 of 2003 under Order 1 Rule 10(2) of CPC for the relief of impleading them as additional respondents 5 to 23 in the first appeal. The order of dismissal passed in I.A.No.426 of 2003 was challenged in the above said revision before this Court. Relying on two decisions (i)Aliji Momonji & Co., v. Lalji Mavji and others(1996 (5)SCC 379 and (ii) Dr.S.Kameswaran-v.A.Jayaraman and another (1998(2) CTC 470). This Court has held that an impleading petition at the appellate stage cannot be entertained. The relevant observation deciding this revision petition in Aliji Momonji & Co., v. Lalji Mavji and others(1996 (5)SCC 379 runs as follows:

"The Supreme Court defined a necessary party as one without whose presence no effective and complete adjudication of the dispute could be made and no relief granted. Proper party is defined as one whose presence is necessary for complete and effectual adjudication of the dispute, though no relief is sought against him. In the case on hand, the Trial Court has already decided the lis between the parties and the correctness of the same is under challenge in the First Appeal. In other words, in so far as the Trial Court is concerned, an effective adjudication has already been made by the Trial Court and a complete and final decision has also been rendered. Therefore, the respondents 5 to 23 do not pass either of the above tests, to be treated as necessary or proper parties."

The exact observation in Dr.S.Kameswaran-v.A.Jayaraman and another (1998(2) CTC 470) relevant for the purpose of deciding this case runs as follows:

" A Division Bench of this Court held that a party can be impleaded when there is a cause of action against him. But in this case, the actual parties to the litigation, claim title to the property as absolute owners and there is no pleading to the effect that the proposed

respondents have either denied the title of any one of them or interfered with the possession and enjoyment of any one of them. Thus no cause of action is either pleaded or sought to be established against the proposed parties and hence they are actually unnecessary for the adjudication of the lis between the parties, especially at the stage of the appeal".

In the absence of any evidence to show that the present revision petitioner is the elected Managing Trustee of the Sri Arulmigu Venkatesa Perumal Temple, I am of the view that the findings of the learned first appellate Judge in C.M.P.Nos.2257 of 2005 and 2256 of 2005 in A.S.No.237 of 2005 and A.S.No.268 of 2004 respectively need not be interfered with.

4. In fine both civil revision petitions are dismissed confirming the order passed in C.M.P.Nos.2257 of 2005 and 2256 of 2005 in A.S.No.237 of 2005 and A.S.No.268 of 2004 respectively on the file of V Additional Judge, City Civil Court, Chennai. No costs. Consequently, connected C.M.P.Nos.786 and 787 of 2006 are also dismissed. It is represented that the plaintiff in O.S.No.8692 of 1997 is a Senior Citizen. Under such circumstances, the learned first appellate Judge is directed to dispose of appeals in A.S.No.237 of 2005 and 268 of 2004 within a period of two months from the date of receipt of a copy of this order.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

sg

To

The V Additional Judge, City Civil Court, Chennai

1 cc to Mr.S. Senthilnathan, Advocate, Sr. 70572

1 ccto Mr.B.T. Sesadri, Advocate, SR. 70629

2 cc to Mr.V.B. Thirupathikumar, Advocate, SR. 70535

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